because the premises, which were leased for the purpose of selling liquor thereon, could no longer be used lawfully for that purpose. We now find a decision from Alabama which seems to squint the other way. In that case, property was leased for occupation as a saloon and not otherwise. A prohibition law was subsequently passed. In a suit for rent, the tenant defended on the ground that there was a total destruction of the premises. Held, the theory of the defense was correct, but the law did not work a total destruction, as non-intoxicating liquors could be sold. O'Bryne *v.* Henley (Ala. 1909) 50 So. 83.

This case is reconciled with the ruling in the English case in the following note which we take from the Columbia Law Review, vol. 9, p. 735: "It is generally stated that, since rent is a certain profit issuing out of land in compensation for its use and occupation, Chamberlain *v.* Godfrey's Admin. (1873) 50 Ala. 530, a destruction by fire, inevitable accident, or the public enemy, does not relieve the tenant from an express covenant to pay rent. 3 Kent Com. 466; Cook & Co. *v.* Anderson (1887) 85 Ala. 99. There is a limitation on this principle, however, where the entire subject matter of the lease is totally destroyed, since in this case there is nothing from which rent can issue, and therefore the lease may be terminated. Graves *v.* Berdan (N. Y. 1859) 29 Barb. 100; McMillan *v.* Solomon (1868) 42 Ala. 356 (leased rooms). The cases laying down this rule and its limitation, however, are all cases of destruction by accidental fire. In South Carolina, on the other hand, it is maintained that rent springs from a beneficial use of the premises, that a deprivation of such use, although without physical destruction, is sufficient to constitute failure of consideration, and that a tenant should be allowed to rescind. Coogan *v.* Parker (1870) 2 S. C. 255. This principle, however, is declared to apply only in cases of destruction by act of God or the public enemy, and not by accidental fire, as in the latter event, owing to the difficulties of proof, a tenant, by his own act, might terminate the relation. Coogan *v.* Parker supra. This interpretation, however, is irreconcilable with the result reached when there is a total physical destruction of the premises, Graves *v.* Berdan supra, and the general doctrine does not appear substantiated by the cases. The principal case is of interest in showing an adoption of the South Carolina rule in place of the general rule, which previously obtained in Alabama."

Savage Domestic Animal—Scienter—Liability of Owner of Dangerous Animal—Trespasser.—In Lowery *v.* Walker (1909) 2 K. B. 433, the defendant, a farmer, was owner of a savage horse which had previously bitten human beings to the defendant's knowledge, and he kept the horse in one of his fields through which there was a footpath along which, as the defendant knew, numbers of the public had for thirty-five years habitually trespassed in order

to make a short cut from a highway to a railway station. The plaintiff, while thus trespassing on the field, was bitten by the horse. The defendant had frequently interfered with people using the foot-path, but had never taken any legal proceedings for the purpose of stopping trespassers, and gave as a reason that most of the trespassers were his own customers. The County Court judge who tried the action, held that in these circumstances the defendant was liable to the plaintiff, but a Divisional Court (Darling and Pickford, JJ.) reversed his decision, on the ground that the plaintiff being a trespasser had no right of action.—Canada Law Journal.

Negligence—Public Hospital—Liability of Governors of Hospital—Operation—Injury to Patient—Hospital Staff.—Hillyer *v.* St. Bartholomew's Hospital (1909) 2 K. B. 820 was an action brought by the plaintiff against the governors of a public hospital to recover damages for injuries sustained through the alleged negligence of the hospital staff while the plaintiff was undergoing an operation. The facts were that the plaintiff was placed on the operating table for the purpose of examination under an anæsthetic, and that his arms had been suffered to hang over its side; his left arm coming in contact with a hot water radiator projecting from beneath the table whereby it was burned and the upper part of his right arm being bruised by the operator or some other person pressing against it, the result of the injuries being trumatic neuritis and paralysis of both arms. Grantham, J., who tried the action held that the defendants were not responsible for the alleged negligence and he dismissed the action; and his decision was affirmed by the Court of Appeal (Cozens-Hardy, M. R., and Farwell and Kennedy, L. JJ.), who held that the hospital surgeons engaged in the operation, though employed by the defendants were not in the relation of servants, inasmuch as the defendants had no power or control over them in the way they exercised their duties, nor were they in any way bound to conform to the directions of the defendants in the discharge of their duties, and the only duty the defendants were under in the matter was to exercise reasonable care in the appointment of competent persons on their hospital staff. The nurses and carriers it was conceded stood in a somewhat different position to the surgeons, and though they were servants of the defendants for general purposes, yet when engaged in assisting at operations they ceased to be servants of defendants and were then under the control and orders of the surgeons.—Canada Law Journal.